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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SAN DIEGO COASTKEEPER, a California non-
profit corporation, COASTAL
ENVIRONMENTAL RIGHTS FOUNDATION, a
California non-profit corporation,

Plaintiffs,

vs.

REYBRO, Inc., a California corporation;

Defendant.

Civil Case No. 3:15-cv-02706-W-DHB

CONSENT DECREE

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)

CONSENT DECREE

The following Consent Decree is entered into by and between San Diego Coastkeeper (“Coastkeeper”) and Coastal Environmental Rights Foundation (“CERF”) (“collectively “Plaintiffs”) and Reybro Inc. (“Reybro”). The entities entering into this Consent Decree are each an individual “Settling Party” and collectively the “Settling Parties.”

WHEREAS, Coastkeeper is a 501(c)(3) non-profit public benefit corporation organized under the laws of the State of California, with its main office in San Diego, California;

WHEREAS, Coastkeeper is dedicated to the preservation, protection, and defense of the rivers, creeks, and coastal waters of San Diego County from all sources of pollution and degradation;

WHEREAS, CERF is a non-profit organization founded by surfers in North San Diego County and active throughout California’s coastal communities;

WHEREAS, CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents, and one of CERF’s primary areas of advocacy is water quality protection and enhancement;

WHEREAS, Reybro, Inc., is the owner and operator of a metals recycling facility located at 149 Nettleton Road, Vista, California 92083, hereinafter referred to by the Settling Parties as the “Reybro Facility”;

WHEREAS, Plaintiffs’ members live and/or recreate in and around Buena Vista Creek, Buena Vista Lagoon, and the Pacific Ocean area waters which Plaintiffs’ members allege receive discharges from the Reybro Facility, including specifically Buena Vista Creek, Buena Vista Lagoon, and ultimately the Pacific Ocean;

WHEREAS, the discharges from the Reybro Facility are regulated by the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“1997 Storm Water Permit”), and as amended by Order No. 2014-0057-DWQ (“2014 Storm Water Permit”), and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act” or “CWA”);

WHEREAS, on May 22, 2015, Plaintiffs sent Reybro, the United States Environmental Protection Agency (“EPA”), EPA Region IX, the State Water Resources Control Board (“State Board”),

1 and the San Diego Regional Water Quality Control Board ("Regional Board") a notice of intent to file
2 suit ("Notice Letter") under Sections 505(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1365(a) and
3 (b). The Notice Letter alleged violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a),
4 and violations of the 1997 Storm Water Permit at the Reybro Facility;

5 **WHEREAS**, on December 2, 2015, Plaintiffs filed a complaint against Reybro in the United
6 States District Court, Southern District of California (Case No. 3:15-cv-02706-W-DHB), alleging
7 violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and violations of the Storm
8 Water Permit at the Reybro Facility ("Complaint");

9 **WHEREAS**, Plaintiffs allege Reybro to be in violation of the substantive and procedural
10 requirements of the 1997 Storm Water Permit and the Clean Water Act with respect to the Reybro
11 Facility;

12 **WHEREAS**, Reybro denies all allegations in the Notice Letter and Complaint relating to the
13 Reybro Facility;

14 **WHEREAS**, Plaintiffs and Reybro have agreed that it is in the Settling Parties' mutual interest
15 to enter into a Consent Decree setting forth terms and conditions appropriate to resolving the allegations
16 set forth in the Complaint without further proceedings;

17 **WHEREAS**, all actions taken by Reybro pursuant to this Consent Decree shall be made in
18 compliance with all applicable federal and state laws and local rules and regulations.

19 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
20 **PARTIES AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

21 1. The Court has jurisdiction over the subject matter of this action pursuant to Section
22 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a);

23 2. Venue is appropriate in the Southern District of California pursuant to Section 505(c)(1)
24 of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the Reybro Facility is located within this
25 District;

26 3. The Complaint states claims upon which relief may be granted pursuant to Section
27 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1);

28 4. Plaintiffs have standing to bring this action;

1 5. The Court shall retain jurisdiction over this matter for purposes of enforcing the terms of
2 this Consent Decree for the life of the Consent Decree, or as long thereafter as is necessary for the Court
3 to resolve any motion to enforce this Consent Decree.

4 **I. OBJECTIVES**

5 6. It is the express purpose of the Settling Parties entering into this Consent Decree to
6 further the objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251, et seq., and to resolve those
7 issues alleged by Plaintiffs in its Complaint. In light of these objectives and as set forth fully below,
8 Reybro agrees to comply with the provisions of this Consent Decree and to comply with the
9 requirements of the 2014 Storm Water Permit and all applicable provisions of the Clean Water Act.
10 Specifically, Reybro agrees to comply with Receiving Water Limitation VI.A. in the 2014 Storm Water
11 Permit which requires that Reybro “shall ensure that industrial storm water discharges and authorized
12 Non-Stormwater Discharges do no cause or contribute to the exceedance of any applicable water quality
13 standards in any affected receiving water,” and Effluent Limitation V.A. of the 2014 Storm Water
14 Permit which requires that Reybro “shall implement Best Management Practices (“BMPs”) that comply
15 with the BAT/BCT requirements of the [2014 Storm Water Permit] to reduce or prevent discharges of
16 pollutants in [Reybro] storm water discharge in a manner that reflects best industry practice considering
17 technological availability and economic practicability and achievability.” Reybro shall develop and
18 implement BMPs necessary to achieve compliance with BAT/BCT standards and with the applicable
19 water quality standards as those terms are defined by the 2014 Storm Water Permit.

20 **II. AGENCY REVIEW AND TERM OF CONSENT DECREE**

21 7. Plaintiffs shall submit this Consent Decree to the United States Department of Justice and
22 the EPA (collectively “Federal Agencies”) within three (3) days of the final signature of the Settling
23 Parties for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five
24 (45) days after receipt by both agencies, as evidenced by written acknowledgement of receipt by the
25 agencies or the certified return receipts, copies of which shall be provided to Reybro if requested. In the
26 event that the Federal Agencies object to entry of this Consent Decree, the Settling Parties agree to meet
27 and confer to attempt to resolve the issue(s) raised by the Federal Agencies within a reasonable amount
28 of time.

1 8. The term "Effective Date" as used in this Consent Decree shall mean the day the Court
2 enters this Consent Decree.

3 9. This Consent Decree shall terminate three (3) years after the Effective Date
4 ("Termination Date"), unless there is a prior ongoing, unresolved dispute regarding Reybro's compliance
5 with this Consent Decree.

6 10. Coastkeeper and CERF may conduct an inspection of the Reybro Facility up to forty-five
7 (45) days prior to the Termination Date. The inspection shall be conducted according to the rules
8 applicable to annual site inspections described below.

9 **III. POLLUTION CONTROL REQUIREMENTS**

10 **A. Storm Water Pollution Reduction Measures**

11 11. The storm water pollution control measures required by this Consent Decree shall be
12 designed and operated to manage, through infiltration, treatment, and/or diversion of two (2) times the
13 Design Storm pursuant to the 2014 Storm Water Permit section X.6 ("Consent Judgement Design
14 Storm"). The structural storm water pollution control measures agreed to under this Consent Decree
15 shall be in place and operable throughout the entire year.

16 11.1. The following BMPs, as more fully described in Reybro's Storm Water Pollution
17 Prevention Plan ("SWPPP") attached hereto as Exhibit A shall be implemented at
18 the Reybro facility, the boundaries of which are outlined on the Reybro Facility
19 Site Map attached hereto as Exhibit B. The Parties agree that the SWPPP may be
20 modified from time to time as more fully described in Section D of this Consent
21 Decree. In the event of a modification to the SWPPP or Facility Site Map, Reybro
22 will serve a copy of the revised exhibits on Plaintiffs and the Court.

23 11.1.1. Non-Structural BMPs

24 a. The Non-Structural BMPs will conform with Non-Structural BMPs
25 identified in the SWPPP, attached hereto as Exhibit A.

26 11.1.2 Structural BMPs

27 a. Reybro will construct a four stage treatment train, as more fully described in
28 Exhibit C.

B. Numeric Limits

12. Numeric Limits for Discharges from Reybro Facility. Stormwater discharged from the Reybro Facility shall not contain pollutants above the levels set forth in Table 1.

Table 1 Numeric Limits for Discharges

Pollutant	Limit	Test Method
Total Suspended Solids	100 mg/L	SM-2540-D
Total Recoverable Copper	0.014 mg/L	EPA-200.8
Total Recoverable Lead	0.082 mg/L	EPA-200.8
Total Recoverable Zinc	0.12 mg/L	EPA-200.8
Oil and Grease	15 mg/L	EPA-1664A
Total Recoverable Aluminum	0.750 mg/L	EPA-200.8
Total Recoverable Iron	1.0 mg/L	EPA-200.8
Chemical Oxygen Demand	120 mg/L	SM 5220C
pH	6-9 units	Per Storm Water Permit Section XI.C.2

C. Action Plan

13. Discharge Action Plan for Table 1 Exceedances. If Reybro's monitoring reveals two exceedances of the numeric limits specified in Table 1 for any one constituent during a wet season, Reybro shall submit a plan to Plaintiff for reducing the level of pollutant to Table 1 Limits ("Discharge Action Plan"). The Discharge Action Plan for the Reybro Facility shall be prepared by a Qualified Industrial Storm Water Professional ("QISP") and must be submitted to Plaintiffs within thirty (30) days of Reybro's receipt of sampling data showing exceedances of Table 1 Limits.

14. Discharge Action Plan Requirements. Each Discharge Action Plan submitted shall be prepared by a Qualified Industrial Storm Water Professional ("QISP") and include at a minimum: (1) the

1 identification of the contaminant(s) discharged in excess of the numeric value(s) in Table 1; (2) an
2 assessment of the source of each contaminant discharged in excess of the numeric value(s) in Table 1
3 and the extent to which those contaminants are associated with industrial activities; (3) for contaminants
4 associated with industrial activities the identification of additional BMPs, that shall be implemented to
5 achieve compliance with the Table 1 Limit(s), as well as the design plans and calculations of these
6 additional BMPs, or, in the alternative, an evaluation of any additional BMPs the would reduce or
7 prevent an exceedance, estimated costs of the additional BMPs evaluated, an analysis demonstrating that
8 the additional BMPs needed to prevent the exceedance are not BAT/BCT and are not required to ensure
9 discharges do not cause or contribute to violations of water quality standards, and an analysis describing
10 the basis for the selection of BMPs implemented in lieu of the additional BMPs evaluated but not
11 implemented), and (4) time schedules for implementation of the proposed BMPs. The time schedule(s)
12 for implementation shall ensure that all BMPs are implemented as soon as possible but in no case later
13 than September 30 (prior to the next Wet Season), provided however that Reybro shall be entitled to a
14 single time extension for up to six (6) months upon the submission of the following information with the
15 Discharge Action Plan: (1) an explanation of why it would be infeasible to implement the Discharge
16 Action Plan by September 30 despite the exercise of due diligence and good faith effort, (2) a schedule
17 and detailed description of the necessary tasks to be performed, and (3) a description of any additional
18 temporary BMPs that will be implemented while permanent BMPs are being constructed.

19 15. Action Plan Review. Plaintiffs shall have forty-five (45) days upon receipt of a Discharge
20 Action Plan to provide Reybro with one joint set of comments. Within fourteen (14) days from the date
21 Plaintiffs' comment on the Discharge Action Plan, Reybro shall provide Plaintiffs with a written
22 explanation prepared by a QISP if Reybro refuses to integrate any of Plaintiffs' comments into the
23 applicable Discharge Action Plan. Any disputes as to the adequacy of any Discharge Action Plan shall
24 be resolved pursuant to the dispute resolution provisions of this Consent Decree.

25 16. Reybro shall diligently file and pursue all required local agency applications for permits
26 and/or approvals for the BMPs included in any Discharge Action Plan. Reybro shall further diligently
27 pursue the procurement of contractors, labor, and materials to complete all such BMPs by the deadline
28 for implementing the Discharge Action Plan set in Paragraph 14 described above, and shall use their

1 best efforts to meet these deadlines.

2 **D. Sampling at the Reybro Facility.**

3 17. Reybro shall install a recording rain gauge capable of recording rainfall to 0.1 inches at
4 the Reybro Facility within thirty (30) days of the Effective Date. Reybro shall maintain the recording
5 rain gauge in accordance with the manufacturers' recommendations, maintain records of all maintenance
6 and rain data, and provide such rain gauge data to Plaintiffs at the end of each calendar quarter during
7 the Wet Season (October 1 – May 30) for the term of this Consent Decree.

8 18. Reybro shall provide the records described in Paragraph 17 to Plaintiffs within ten (10)
9 days of any written request by Coastkeeper or CERF.

10 19. Storm Water Monitoring. By September 30, 2015, Reybro shall develop a plan for
11 monitoring all storm water and non-storm water discharges from the Reybro Facility that meets the
12 requirements of this Consent Decree and Section XI of the 2014 Storm Water Permit, and incorporate
13 same into its SWPPP.

14 **i. Sample Collection**

15 20. During the life of this Consent Decree, Reybro shall collect samples of any stormwater
16 discharge from industrial areas at the Reybro Facility in conformity with its Monitoring Plan. For
17 purposes of this Consent Decree, this includes any stormwater discharge occurring during the Reybro
18 Facility's operating hours or, for stormwater stored onsite prior to discharge, whenever stormwater is
19 released off site, whether during operating hours or not. Should Reybro demonstrate full compliance
20 with all of the discharge limitations in Table 1 for four (4) consecutive sampling events Reybro may
21 reduce sampling in compliance with XI.C.7. of the 2014 Storm Water Permit, except under no
22 circumstances shall Reybro be permitted to collect samples from less than two (2) discharges per wet
23 season unless it does not discharge two times in a particular wet season.

24 **ii. Sampling Analysis and Reporting**

25 21. Reybro shall comply with the analytical methods as required by Section XI.B of the 2014
26 Storm Water Permit as more fully described in the Monitoring Plan.

27 22. Reybro shall request that results of all sample analyses required by this Consent Decree
28 be reported to it within fifteen (15) days of laboratory receipt of the sample.

23. Reybro shall provide the complete laboratory results of all samples collected pursuant to the 2014 Storm Water Permit or this Consent Decree to Plaintiffs concurrently with the posting of same on SMARTS or no later than fifteen (15) days from receipt of the sample results from the laboratory, whichever is sooner. Where such results are not required by the 2014 Storm Water Permit, Reybro shall provide the complete laboratory results of all samples collected pursuant to this Consent Decree to Plaintiffs within fifteen (15) days of receipt by Reybro from the laboratory.

24. Reybro shall submit a written report to Plaintiffs no later than June 15 at the end of each Wet Season that contains all rain gauge data for the Wet Season, all storm water samples collected at the Reybro Facility, all analytical results from samples collected at the Reybro Facility, an explanation of any failure to collect and analyze a storm water discharge as required by this Consent Decree or the 2014 Storm Water Permit.

25. Any failure to sample pursuant to the requirements of this Consent Decree shall be documented and explained to Plaintiffs by email within five (5) days of the date a sample could have been collected but was not.

E. Visual Observations

26. During the life of this Consent Decree, Reybro shall conduct visual observations during normal scheduled facility operating hours during every rain event that produces a discharge at any discharge points at the Reybro Facility pursuant to section XI.A. of the 2014 Storm Water Permit and as more fully described in the Reybro SWPPP.

F. Monitoring and Reporting Program Revisions

27. By September 30, 2015, or forty-five (45) days after the Effective Date, whichever is earlier, Reybro shall revise its Monitoring Plan for the Reybro Facility to incorporate all sampling, analysis, observation, and reporting requirements of this Consent Decree and the 2014 Storm Water Permit.

28. Reybro shall submit the revised Monitoring Plan for the Reybro Facility to Plaintiffs for review and comment. Plaintiffs shall provide comments, if any, to Reybro within thirty (30) days of receipt of the Monitoring Plan. Reybro shall incorporate Plaintiffs' comments into the Monitoring Plan, or shall justify in a writing prepared by a QISP why any comment is not incorporated within fifteen (15)

1 days of receiving comments. Any disputes over the adequacy of the revised Monitoring Plan shall be
2 resolved pursuant to the dispute resolution provisions of this Consent Decree, set out in Section VI
3 below.

4 **G. Storm Water Pollution Prevention Plan Revisions**

5 29. By September 30, 2015, or forty-five (45) days after the Effective Date, whichever is
6 earlier, Reybro shall revise the SWPPP for the Reybro Facility to include all BMPs required by the
7 Consent Decree and comply with all provisions of the 2014 Storm Water Permit.

8 30. Reybro shall submit the revised SWPPP to Plaintiffs for review and comment. Plaintiffs
9 shall provide comments, if any, to Reybro within sixty (60) days of receipt of the SWPPP. Reybro shall
10 incorporate Plaintiffs' comments into the SWPPP, or shall justify in a writing prepared by a QISP why
11 any comment is not incorporated within fifteen (15) days of receiving comments. Any disputes as to the
12 adequacy of the revised SWPPP shall be resolved pursuant to the dispute resolution provisions of this
13 Consent Decree, set out in Section VI below.

14 31. Additional SWPPP Revisions. Reybro shall engage a QISP to revise the SWPPP for the
15 Reybro Facility if there are any changes in the Reybro Facility's operations, including, but not limited
16 to, changes to storm water discharge point(s) or revisions and/or additions to the BMPs implemented
17 pursuant to any Discharge Action Plan. Reybro shall submit any SWPPP revisions made pursuant to the
18 requirements of this paragraph to Plaintiffs for review and comment within ten (10) days of the SWPPP
19 revision. Coastkeeper will provide comments, if any, to Reybro within thirty (30) days of receipt of such
20 revised SWPPP. Reybro shall incorporate Plaintiffs' comments into any revised SWPPP, or shall justify
21 in a writing prepared by a QISP as to why any comment is not incorporated within thirty (30) days of
22 receiving comments. Any disputes as to the adequacy of the revised SWPPP shall be resolved pursuant
23 to the dispute resolution provisions of this Consent Decree, set out in Section VI below.

24 **H. Employee Training**

25 32. Within thirty (30) days of the Effective Date of this Consent Decree, Reybro shall
26 develop and implement a training program, in compliance with Section X.H.1.f., X.H.1.g., and IX of the
27 2014 Storm Water Permit ("Training Program"). At a minimum the Training Program shall include at
28 least the following:

1 i. Language. Reybro shall conduct the Training Program in the language or languages in
2 which all employees participating in the Training Program are fluent.

3 ii. Non-Stormwater Discharges. Reybro shall train all designated employees on the 2014
4 Storm Water Permit's prohibition of non-storm water discharges, so that employees know what non-
5 storm water discharges are, that non-storm water discharges can result from improper surface washing
6 or dust control methods, and how to detect and prevent non-storm water discharges to ensure
7 compliance with this Consent Decree and the 2014 Storm Water Permit.

8 iii. BMPs. Reybro shall train all designated employees on BMP implementation and
9 maintenance to ensure that BMPs are implemented effectively to prevent the exposure of pollutants to
10 storm water, to prevent the discharge of contaminated storm water, and to ensure the proper treatment
11 of storm water at the Reybro Facility.

12 iv. Storm Water Sampling. Reybro shall designate an adequate number of employees
13 necessary to collect storm water samples from each discharge location as required by this Consent
14 Decree. The training shall include the proper sampling protocols, including chain of custody
15 requirements, to ensure storm water samples are properly collected, stored, and submitted to a
16 certified laboratory.

17 v. Visual Observation Training. Reybro shall provide training to all designated employees at
18 the Reybro Facility regarding visual observations pursuant to this Consent Decree and the 2014 Storm
19 Water Permit.

20 33. Training shall be provided by a QISP who is familiar with the requirements of this
21 Consent Decree and the 2014 Storm Water Permit. The training shall be repeated annually, or as
22 necessary to ensure that all such employees are familiar with the requirements of this Consent Decree,
23 the 2014 Storm Water Permit, and the Reybro Facility's SWPPP. All new designated staff shall receive
24 this training before assuming responsibilities for implementing the Reybro Facility's SWPPP or
25 Monitoring Plan.

26 34. Reybro shall maintain training records to document compliance with this section, and
27 shall provide Plaintiffs with a copy of these records within fourteen (14) days of receipt of a written
28 request.

1 **IV. Compliance Monitoring and Reporting**

2 35. Site Inspections. Every year during the life of this Consent Decree, up to three (3) of
3 Plaintiffs' representatives may conduct one (1) Wet Season site inspection and one (1) Dry Season (June
4 1 – September 30) site inspection of the Reybro Facility. The site inspections shall occur during normal
5 business hours. Plaintiffs shall provide Reybro with twenty four (24) hours' notice (weekends and
6 holidays excluded) prior to each Wet Season site inspection, and forty-eight (48) hours' notice
7 (weekends and holidays excluded) prior to each Dry Season site inspection. Notice shall be provided by
8 telephone and electronic mail, and shall state the names of all persons that Plaintiffs will bring to the
9 inspection.

10 36. During the site inspections, Plaintiffs and their designated representatives shall be
11 allowed access to the Reybro Facility's SWPPP(s), M&RP, and all other monitoring records, reports,
12 and sampling data for the Reybro Facility.

13 37. During the site inspections, Plaintiffs and their designated representatives may collect
14 stormwater samples at the Reybro Facility.

15 38. During the site inspections, Plaintiffs may take photographs and video recordings of the
16 Reybro Facility. If Plaintiffs takes any photographs or video recordings, Plaintiffs shall provide Reybro
17 with the photographs and video within fourteen (14) days after any written request by Reybro for such
18 photographs and videos.

19 39. Compliance Monitoring and Oversight. Reybro shall pay a total of Five Thousand
20 (\$5,000) to compensate Plaintiffs for costs and fees to be incurred for monitoring Reybro' compliance
21 with this Consent Decree. Payment shall be made within five (5) business days of the Effective Date
22 payable to "San Diego Coastkeeper" via U.S. Mail.

23 40. Action Plan Payments. Reybro shall pay Three Thousand Dollars (\$3,000) each time an
24 Action Plan is submitted to Plaintiffs. Payments shall be submitted simultaneously with the submittal of
25 the Action Plan. Payments shall be made payable to "San Diego Coastkeeper"

26 41. Reybro Document Provision. During the life of this Consent Decree, Reybro shall copy
27 Plaintiffs on all documents related to storm water quality at the Reybro Facility that are submitted to the
28 Regional Board, the State Board, and/or any state or local agency, county, or municipality. Such reports

1 and documents shall be provided to Plaintiffs on the date they are sent to the agencies, counties, and/or
2 municipalities. Any correspondence related to Reybro' compliance with the 2014 Storm Water Permit or
3 storm water quality received by Reybro from any regulatory agency, state or local agency, county, or
4 municipality shall be provided to Plaintiffs within ten (10) days of receipt by Reybro.

5 **V. Environmental Project, Reimbursement of Litigation Fees and Costs, and Stipulated**
6 **Payments**

7 42. Environmental Project. To remediate the alleged environmental harms resulting from
8 non-compliance with the 2014 Storm Water Permit alleged in the Complaint, Reybro agrees to make a
9 payment of Seven Thousand Five Hundred Dollars (\$7,500) to Preserve Calavera to fund environmental
10 project activities that will reduce or mitigate the impacts of storm water pollution from industrial
11 activities on the Southern California Bight and its tributaries. The payments shall be made within five
12 (5) days of the Effective Date payable to "Preserve Calavera", sent to: Attn: Diane Nygaard, 5020
13 Nighthawk Way, Oceanside, CA 92056. Reybro shall provide Plaintiffs with a copy of such payment.

14 43. Reimbursement of Attorneys' Fees and Costs. Reybro shall pay a total of Twenty-Five
15 Thousand Dollars (\$25,000) to Coastkeeper and Coast Law Group to fully reimburse CERF and
16 Coastkeeper for their investigation fees and costs, expert/consultant fees and costs, and reasonable
17 attorneys' fees incurred as a result of investigating and preparing the lawsuit and negotiating this
18 Consent Decree. Payment shall be made within five (5) days of the Effective Date payable to "Coast
19 Law Group, LLP" and delivered to Coast Law Group, LLP, Attn: Livia Borak, 1140 South Coast
20 Highway 101, Encinitas CA, 92024 via U.S. Mail.

21 44. Stipulated Payment. Reybro shall make a remediation payment of One Thousand Five
22 Hundred Dollars (\$ 1,500) for each missed deadline included in this Consent Decree. Payments for a
23 missed deadline shall be made for the restoration or improvement (or both) of the watershed in the area
24 affected by Reybro' alleged discharges and shall be awarded to Preserve Calavera. Reybro agree to
25 make the stipulated payment within thirty (30) days of a missed deadline. The payments shall be mailed
26 via regular mail to the attention of Diane Nygaard at 5020 Nighthawk Way, Oceanside, CA 92056.
27 Reybro shall provide Plaintiffs with a copy of each such payment at the time it is made.

28 **VI. DISPUTE RESOLUTION AND RETENTION OF JURISDICTION**

1 45. This Court shall retain jurisdiction over this matter until the Termination Date defined
2 above for the purposes of implementing and enforcing the terms and conditions of this Consent Decree
3 and adjudicating all disputes among the Settling Parties that may arise under the provisions of this
4 Consent Decree, unless a Party files and is granted a timely motion requesting an extension of time for
5 the Court to retain jurisdiction. The Court shall have the power to enforce this Consent Decree with all
6 available legal and equitable remedies, including contempt.

7 46. Meet and Confer. A party to this Consent Decree shall invoke the dispute resolution
8 procedures of this Section by notifying all other Settling Parties in writing of the matter(s) in dispute.
9 The Settling Parties shall then meet and confer in good faith (either telephonically or in person) in an
10 attempt to resolve the dispute informally over a period of ten (10) days from the date of the notice. The
11 Settling Parties may elect to extend this time in an effort to resolve the dispute without court
12 intervention.

13 47. If the Settling Parties cannot resolve a dispute by the end of meet and confer informal
14 negotiations, the party initiating the dispute resolution provision may invoke formal dispute resolution
15 by filing a motion before the United States District Court for the Southern District of California. The
16 Settling Parties agree to request an expedited hearing schedule on the motion if requested by any
17 Settling Party.

18 48. Burden of Proof. In any dispute resolution proceeding, Defendant shall have the burden
19 of demonstrating its BMPs meet BAT/BCT standards as defined by the 2014 Storm Water Permit and
20 implementing regulations and are adequate to ensure Defendant's discharges do not cause or contribute
21 to a violation of water quality standards.

22 49. Enforcement Fees and Costs. Litigation costs and fees incurred in conducting a meet and
23 confer session(s) or otherwise addressing and/or resolving any dispute, including an alleged breach of
24 this Consent Decree, shall be awarded in accordance with the standard established by § 505 of the Clean
25 Water Act, 33 U.S.C. §§ 1365 and 1319, and case law interpreting that standard.

26 **VII. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

27 50. Plaintiffs' Release. Upon the Effective Date of this Consent Decree, Plaintiffs, on their
28 own behalf and on behalf of their current and former officers, directors, employees, and each of their

1 successors and assigns, and their agents, and other representatives release all persons including, without
2 limitation, Reybro (and each of their direct and indirect parent and subsidiary companies and affiliates,
3 and their respective current and former officers, directors, members, employees, shareholders, and each
4 of their predecessors, successors, and assigns, and each of their agents, attorneys, consultants, and other
5 representatives) from and waive all claims alleged in the Notice Letter and Complaint up to the Effective
6 Date of this Consent Decree.

7 51. Reybro's Release. Upon the Effective Date of this Consent Decree, Reybro, on its own
8 behalf and on behalf of its current and former officers, directors, employees, members, and each of their
9 successors and assigns, and their agents, and other representatives releases Plaintiffs (and their current
10 and former officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of
11 their successors and assigns, and their agents, attorneys, and other representatives) from and waives all
12 claims which arise from or pertain to this action, including all claims for fees (including fees of
13 attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed for matters related
14 to Plaintiffs' Notice Letter and Complaint up to entry of this Consent Decree by the Court.

15 52. Nothing in this Consent Decree limits or otherwise affects any Party's right to address or
16 take any position that it deems necessary or appropriate in any formal or informal proceeding before the
17 State Board, Regional Board, EPA, or any other administrative body on any other matter relating to
18 Reybro's compliance with the 2014 Storm Water Permit or the Clean Water Act occurring or arising after
19 the effective date of this Consent Decree.

20 **VIII. MISCELLANEOUS PROVISIONS**

21 53. No Admission of Liability. Neither this Consent Decree, the implementation of additional
22 BMPs, nor any payment pursuant to the Consent Decree shall constitute or be construed as a finding,
23 adjudication, admission, or acknowledgment of any fact, law, or liability, nor shall it be construed as an
24 admission of violation of any law, rule, or regulation. Reybro maintains and reserves all defenses they
25 may have to any alleged violations that may be raised in the future.

26 54. Construction. The language in all parts of this Consent Decree shall be construed
27 according to its plain and ordinary meaning, except as to those terms defined in the 2014 Storm Water
28 Permit, the Clean Water Act, or specifically herein.

1 55. Choice of Law. The laws of the United States shall govern this Consent Decree.

2 56. Severability. In the event that any provision, paragraph, section, or sentence of this
3 Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall
4 not be adversely affected.

5 57. Correspondence. Unless specifically provided for in this Consent Decree, all notices
6 required herein or any other correspondence pertaining to this Consent Decree shall be sent by U.S. mail
7 or electronic mail as follows:

8 If to Plaintiff Coastkeeper:

9 San Diego Coastkeeper
10 Attn: Matt O'Malley
11 2825 Dewey Rd, Suite 200
12 San Diego, CA 92117
13 Email: matt@sdcoastkeeper.org

14 If to Plaintiff CERF:

15 Coastal Environmental Rights Foundation
16 Attn: Sara Kent
17 1140 South Coast Highway 101
18 Encinitas, CA 92024
19 Email: sara@cerf.org

20 With Copy to:

21 Coast Law Group LLP
22 Attn: Livia Borak
23 1140 South Coast Hwy 101
24 Encinitas, CA 92024
25 Email: livia@coastlawgroup.com

26 If to Reybro:

27 Reybro, Inc.
28 Attn: Greg Reynolds
 645 Calle Ladera
 Escondido, CA 92025

With Copy to:

 Oppen & Varco LLP
 Attn: S. Wayne Rosenbaum, Esq.
 225 Broadway, Suite 1900

1 San Diego, CA 92101
2 Email: swr@envirolawyer.com

3 58. Notifications of communications shall be deemed submitted three (3) business days after
4 having been sent via U.S. mail or the day of sending notification or communication by electronic mail.
5 Any change of address or addresses shall be communicated in the manner described above for giving
6 notices.

7 59. Effect of Consent Decree. Except as provided herein, Plaintiffs do not, by their consent to
8 this Consent Decree, warrant or aver in any manner that Reybro's compliance with this Consent Decree
9 will constitute or result in compliance with any federal or state law or regulation. Nothing in this
10 Consent Decree shall be construed to affect or limit in any way the obligation of Reybro to comply with
11 all federal, state, and local laws and regulations governing any activity required by this Consent Decree.

12 60. Counterparts. This Consent Decree may be executed in any number of counterparts, all of
13 which together shall constitute one original document. Telecopy, email of a .pdf signature, or facsimile
14 copies of original signature shall be deemed to be originally executed counterparts of this Consent
15 Decree.

16 61. Modification of the Consent Decree. This Consent Decree, and any provisions herein,
17 may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the
18 Settling Parties. If any Settling Party wishes to modify any provision of this Consent Decree, the Settling
19 Party must notify the other Settling Party in writing at least twenty-one (21) days prior to taking any step
20 to implement the proposed change.

21 62. Full Settlement. This Consent Decree constitutes a full and final settlement of this
22 matter.

23 63. Integration Clause. This is an integrated Consent Decree. This Consent Decree is
24 intended to be a full and complete statement of the terms of the agreement between the Settling Parties
25 and expressly supersedes any and all prior oral or written agreements, covenants, representations, and
26 warranties (express or implied) concerning the subject matter of this Consent Decree.

27 64. Authority. The undersigned representatives for Plaintiffs and Reybro each certify that
28 he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of

1 this Consent Decree.


2 65. The Settling Parties certify that their undersigned representatives are fully authorized to
3 enter into this Consent Decree, to execute it on behalf of the Settling Parties, and to legally bind the
4 Settling Parties to its terms.

5 66. The Settling Parties, including any successors or assigns, agree to be bound by this
6 Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its
7 terms.

8 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the date
9 first set forth below.

10
11 APPROVED AS TO CONTENT

12 Dated: 12/17/2015

By: 
Name: Travis Pritchard
Title: Interim Executive Director
San Diego Coastkeeper

13
14
15
16 Dated: _____

By: _____
Name: _____
Title: _____
Coastal Environmental Rights Foundation

17
18
19 Dated: _____

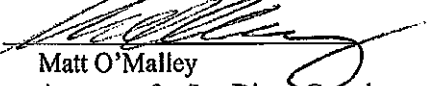
By: _____
Greg Reynolds
President
Reybro, Inc.

20
21
22 APPROVED AS TO FORM

23 Dated: _____

By: _____
Livia Borak
Coast Law Group LLP
Attorneys for CERF

24
25
26 Dated: 12/17/15

By: 
Matt O'Malley
Attorneys for San Diego Coastkeeper

27
28
Consent Decree

18

Civil Case No. 3:15-cv-02706-W-DHB

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8 **IN WITNESS WHEREOF**, the undersigned have executed this Consent Decree as of the date
9 first set forth below.

10

11 APPROVED AS TO CONTENT

12 Dated: _____

By: _____

13

Name: _____

14

Title: _____

San Diego Coastkeeper

15

16 Dated: 12/22/15

By: 

17

Name: SARA KENT

18

Title: PROGRAMS DIRECTOR

Coastal Environmental Rights Foundation

19

20 Dated: _____

By: _____

21

Greg Reynolds

President

Reybro, Inc.

22

23 APPROVED AS TO FORM

24 Dated: 12-22-2015

By: 

25

Livia Borak

Coast Law Group LLP

Attorneys for CERF

26

27 Dated: _____

By: _____

28

Matt O'Malley

Attorneys for San Diego Coastkeeper

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7 terms.

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9 first set forth below.

10
11 APPROVED AS TO CONTENT

12 Dated: _____

By: _____

13

Name: _____

14

Title: _____

San Diego Coastkeeper

15

16 Dated: _____

By: _____

17

Name: _____

18

Title: _____

Coastal Environmental Rights Foundation

19

20 Dated: 12-29-15

By: Gregory H. Reynolds

Greg Reynolds

President

Reybro, Inc.

21
22 APPROVED AS TO FORM

23 Dated: _____

By: _____

Livia Borak

Coast Law Group LLP

Attorneys for CERF

24

25

26

27 Dated: _____

By: _____

Matt O'Malley

Attorneys for San Diego Coastkeeper

28

Livia Borak
Coast Law Group.
Attorneys for CERF

Dated: _____

By: _____

Matt O'Malley
Attorneys for San Diego Coastkeeper

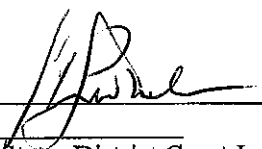
Dated: 12/22/15

By: 

S. Wayne Rosenbaum
Opper & Varco, LLP
Attorney for Reybro

IT IS SO ORDERED.

Date: 5/6/16



United States District Court Judge
Southern District of California